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SUBJECT: MODERNIZING THAI CUSTOMS ONE STEP AT A TIME

REF: A. BANGKOK 2678 (Prime Minister Meets AmCham)

[B.](#) BANGKOK 2387 (Proposed Excise Tax Changes)

[C.](#) BANGKOK 2320 (Ambassador Meets Pradit)

[D.](#) BANGKOK 2185 (Reforming Thai Customs)

[E.](#) BANGKOK 1684 (Deputy PM Korbsak on Customs)

[F.](#) BANGKOK 1574 (Finance Minister Discusses Customs)

[G.](#) BANGKOK 1305 (Deputy PM Suthep on Customs)

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[11.](#) (SBU) SUMMARY: The newly appointed Director General of the Thai Customs Department, Dr. Somchai Sujjapongse, explained to us on November 11 that the government would modernize and reform Customs in three phases. The first would be a limited package to modify the penalty structure and would also include intent as a factor for the courts to consider, so that those who make innocent mistakes are not lumped together with those who were trying to cheat the system. This first package would be ready for Cabinet's approval in the coming weeks. The second phase would look at more comprehensive reforms including a ceiling on what individual officers can receive under the reward-sharing system, as well as procedures to establish advance binding rulings on valuation and classification. The third phase, much more ambitious, would abolish the Customs officer rewards system altogether. He repeated the word "abolish" two separate times to make sure we understood. The new Director General also responded positively to visiting USTR officials' requests to consider strengthening Customs ability to interdict pirated goods transiting Thailand and to engage with USTR in a DVC to review international best practices. END SUMMARY.

[12.](#) (SBU) COMMENT: The Royal Thai Government has announced its intention to transform the Customs Department from "a duty collector to a trade facilitator." Modernizing an institution that has long been regarded as little more than a money-making machine will be an enormous task, but the Prime Minister and Finance Minister committed to the Ambassador their intent to push forward the necessary reforms. The government only signaled its willingness to take on this issue in August, in response to U.S., Japanese, EU, Australian and --importantly -- Thai Board of Trade complaints, and we believe they are making progress, even if not on the original 60-day timeline (reftels). We are in regular touch with the other complainants to share information and consider joint efforts.

[13.](#) (SBU) COMMENT CONT'D: As Finance Minister Korn's pick for the DG job, Somchai has said publicly that he did not pay for the position and thus is not bound to supplement his salary while in it. Nevertheless, whether the young DG will be able to make these reforms happen still remains an open question. Even if he is able to

get them to the Cabinet within the next six months, as he indicated to us is his goal, pushing the reforms through Parliament will take longer and provide many more opportunities for opponents to knock things off track, especially within Customs itself where many porcelain rice bowls are at risk of being broken. Somchai, a civil servant, has probably staked his career on this reform effort. If he is successful, he has a good chance of moving up to Permanent Secretary, the most senior civil service position in the Finance Ministry. If the government does not last long enough to see the reform effort through and new political masters are not so committed, he will be left out on a thin limb. END COMMENT.

Somchai Takes the Reins at Customs

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¶4. (SBU) EconCouns and CommCouns led an Embassy team including visitors from the Office of the U.S. Trade Representative in a meeting with Dr. Somchai Sujjaponge, the newly appointed Director General of the Customs Department, on November 11. Dr. Somchai replaced Wisudhi Srisuphan, who retired on September 30 at the mandatory retirement age of 60. In an unusual personnel shift, Somchai, then the Director General of the Finance Ministry's brain trust, the Fiscal Policy Office, was selected by Minister Korn Chatikavanij to take on the reform project at the Customs Department.

¶5. (SBU) Dr. Somchai, an Ohio State graduate, was quick to tell us about his American connections. Not only did he receive his PhD in Finance from Ohio State University, Somchai also participated in the State Department's International Visitor Program in 1999. Somchai told us he was "very privileged" to participate in an individual program on banking and finance issues and still strongly believes in the importance of the IVP program to strengthening relations between the United States and Thailand.

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One Step at a Time

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¶6. (SBU) As part of our continuing efforts to raise the concerns of American businesses with the Abhisit Administration, we called on Somchai to inquire as to where the customs reforms currently stand. We reiterated to him the U.S.'s longstanding concerns about customs procedures in Thailand, whether the lack of transparency (uncertainty about the duty rates that will be imposed and the valuation method that will be used), arbitrary valuation methods, or the onerous penalty regime. EconCouns detailed our amplified engagement with the government on these issues in recent months -- including meetings the Ambassador had with the Prime Minister, the Deputy Prime Minister, the Finance Minister, and the Deputy Finance Minister (reftels).

¶7. (SBU) Since the Ambassador last met with Deputy Finance Minister Pradit on September 8 (ref C), the Customs Department has continued to mull over a set of reforms to address some of the most egregious and longstanding complaints. Pradit had promised to propose these reforms within sixty days of his August 19 announcement -- a deadline that has now passed. In response to our inquiry, Somchai explained that rather than attempt to reform the Customs Department in one fell swoop, the government has decided to carry out the reforms in three separate phases.

Phase One: "The Most Demanding Issues"

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¶8. (SBU) Director General Somchai and Deputy Finance Minister Pradit have finalized an initial set of amendments to the existing Customs law to propose to Cabinet in order to fast track some of "the most demanding issues," Somchai told us. In this first phase of reform, the amendments would focus on providing flexibility to judges when issuing penalties in customs appeal cases. One amendment will change the appeal penalty to "up to four times" the duty-paid value from the existing mandatory four times the value. If the company accepts the initial fine and does not appeal to the Court system, the penalty will continue to be two times the duty (not the value).

Somchai also explained that these amendments will revise the imprisonment provision from "not exceeding ten years" to "from six months to ten years."

¶19. (SBU) Somchai proposed a new section on "tax avoidance" that distinguishes between fraudulent, criminal intent and inadvertent errors. The existing system penalizes importers "regardless of intent," but he explained that the amendments would add new language to allow Customs officials and the courts (if under appeal) to review whether the importer made an error or if the importer's intent was to cheat on taxes owed.

#### Phase 2: More Comprehensive Reforms

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¶10. (SBU) A committee within the Customs Department is currently reviewing the full Customs Act and proposing more comprehensive reforms to the overall system. This committee is largely composed of Customs Department lawyers, but representatives from several Thai business associations are also participating in this process. Somchai promised that the work of this committee, what he called phase two, would be complete within the next six months.

¶11. (SBU) Somchai stated that this second phase would include reforms to the Customs rewards-sharing system and the establishment of advance binding rulings for valuation and classification decisions. The government will place a cap of 4 million baht (approximately USD 122,000) on the amount of the reward that can be shared with Customs officials. Under the existing system, Customs officials share up to 55 percent of the penalty amount, which is then divided between the officers in the unit involved in assessment of the penalty along with the rest of the chain of command, up to and including the Director General. This practice would continue under the revised system but the total reward would be capped at 4 million baht. If the total penalty amount exceeds 4 million baht, the remainder would be placed into a "central fund" that can be used for capacity building at Customs, the procurement of needed equipment, or other areas that Customs identifies.

¶12. (SBU) In a later meeting, Somchai also proposed including a

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180-day limit on the Customs appeals process. Customs decisions are currently appealed within Customs' own institutional structures to an appeals committee, chaired by the Customs Director General himself. A company is unable to appeal a decision to an independent court until the internal Customs appeals process is finalized. Given the hefty penalties that can be applied during an appeal (four times the invoice value), companies have typically chosen to settle their cases directly with Customs, rather than embark on an uncertain appeal. Somchai, recognizing that this is of major concern to the business community, proposed limiting the internal appeals process to 180 days, after which the company could choose to pursue a court case even if the Customs officials had not finished the internal appeal.

#### Phase 3: Abolishing the Rewards System?

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¶13. (SBU) Somchai clearly stated that he hoped to "abolish the rewards-sharing system" entirely. A revision to do just that would undoubtedly face significant opposition within the Customs Department, as the rewards have been enjoyed by customs officials for many years, but Somchai reiterated to us his intent to do so.

¶14. (SBU) When we inquired about the timeline for the reforms, Somchai said he hoped the first and second phases would be completed within six months, but the third phase would be handled "in the future." (COMMENT: The proposal to abolish the rewards-sharing system is a major development. In previous conversations on this issue, government officials said the rewards system was simply "too sensitive" to discuss or even consider reforming. Somchai's plan to cap the officers' rewards, as well as his intent to abolish the system entirely in the future, reflects Prime Minister Abhisit's and Finance Minister Korn's desire to truly modernize the system, despite the entrenched interests within the Customs Department. END

COMMENT.)

Status of Specific Cases

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¶15. (SBU) We also raised specific ongoing customs disputes of several American companies with the Director General, reiterating our concern about the treatment these companies continue to receive from the Customs Department (reftel C). The Ambassador previously sought the Finance Minister's and Deputy Finance Minister's assistance to settle these disputes, but most remained unresolved. Somchai responded that Deputy Finance Minister Pradit had called him prior to our meeting to stress that the Customs Department must handle these cases transparently and fairly -- and resolve them as soon as possible. Somchai added that the Amway case had been particularly difficult but said that he will "try his best to resolve the case quickly." With regards to the return of cash guarantees to the alcohol beverage industry, Deputy Director General Chaweewan Kongcharoenkitkul expressed her hope that the USD 800,000 currently being held could be returned to the companies by the end of the year. She indicated that her division was awaiting further documents from industry, but she agreed to follow up with us.

Strong Intellectual Property Enforcement

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¶16. (SBU) Rachel Bae, Director for Intellectual Property and Innovation at USTR, commended the Customs Department as one of the strongest intellectual property enforcement agencies in the Thai government. However, since the government was in the process of amending the Customs Act, she encouraged Somchai to consider including a provision to give ex officio authority to Customs officials to interdict shipments transiting Thailand's ports. Ms. Bae explained that the USG remains concerned about infringing exports from other countries that could be transshipped through Thailand. An amendment that empowers Customs officers to inspect and seize these infringing goods would improve overall Customs enforcement of intellectual property rights. Somchai said he would review the matter carefully and report back at a later date.

USTR Proposes Digital Video Conference

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¶17. (SBU) Brian Klein, Director for Southeast Asia at USTR, noted that the USG stands ready to assist as Thailand reviews its customs law. He explained that USTR had previously proposed a digital video

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conference to discuss the details of the proposed amendments, as well as to exchange customs best practices. The DVC would ideally include multiple agencies on both sides, including Customs, Commerce, and Foreign Affairs. The Director General said he would be glad to participate and immediately designated one of his staff members to help coordinate the details with USTR.

JOHN